IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

WP(C).No. 29507 of 2004(K)

PETITIONER:

O.K.AYISHAKUNHI, W/O. NOOR MOHAMMED,
AGED 54 YEARS, ILLIYIEN, NEAR GOVERNMENT POLY TECHNIC, KALLIASSERY P.O. KANNUR DIST.

BY ADV. SRI.SERGI JOSEPH THOMAS
SRI.JINO ANTONY

RESPONDENTS:
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1. THE STATE OF KERALA, REP. BY ITS SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR, KANNUR.

3. REVENUE DIVISIONAL OFFICER, THALASSERY, KANNUR DISTRICT.

4. THE TAHSILDAR, KANNUR.

BY GOVERNMENT PLEADER SRI. C.K. GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE PROCEEDINGS NO. C4.14766/95 DATED 29.2.1996

EXT.P2 SERIES TRUE COPIES OF THE TAX RECEIPTS ISSUED BY THE VILLAGE OFFICER, KANNUR DATED 8.3.96, 10.6.96,. 10.9.96 AND 10.12.96.

EXT.P3 TRUE COPY OF THE OCCUPANCY CERTIFICATE ISSUED BY THE MUNICIPAL ENGINEER, KANNUR DATED.1.1999 IN RESPECT OF GROUND FLOOR.

EXT.P4 TRUE COPY OF THE OCCUPANCY CERTIFICATE ISSUED BY THE MUNICIPAL ENGINEER ON 6.5.2000

EXT.P5 TRUE COPY OF THE JUDGMENT DATED 19.12.2002 IN OP 38397 OF 2002

EXT.P6 TRUE COPY OF THE PROCEEDINGS NO. F. 935/2003 DATED 15.3.2003 OF THE REVENUE DIVISIONAL OFFICER, THALASSERY.

EXT.P7 TRUE COPY OF THE PROCEEDINGS NO. GL-17432/03 DATED 18.6.2004 OF THE DIST. COLLECTOR.

EXT.P8 TRUE COPY OF THE BUILDING PERMIT NO. BA 47/93-94 DATED 23.6.1993

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 29507 OF 2007

Dated this the 11th day of September, 2007

JUDGMENT

Pursuant to interim order dated 31.7.2007 the Tahsildar has filed a report after inspection of the building. It is seen from the report that petitioner's claim of construction of ground floor in 1995-96 is accepted. Based on report fresh assessment has to be made for the additional area constructed either under Section 5(3) or Section 5(4) of the Kerala Building Tax Act which is a matter to be considered by the Tahsildar. If top floor of the building is occupied by petitioner as residence, and the plinth area of it is above the limit that attracts luxury tax, then petitioner is liable to pay luxury tax also. All the impugned orders issued by respondents are quashed with direction to fourth respondent to make fresh assessment based on data gathered by him and as shown in the report after hearing the petitioner. Recovery proceedings will be kept in abeyance for two months from now within which time fresh assessment will be issued by the fourth respondent and if petitioner has any grievance he can file appeal. The amount paid

by the petitioner will be credited towards demand due under revised assessment and only the balance will be recovered from the petitioner.

W.P. is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge